

More specifically, Applicant respectfully submits that one of the key elements of the present invention, which remained unchanged from the original language in the original Claim 1 is that the diffractive micro-structure color wavelength division element is structured to enable the *dual functionalities* of both *wavelength division* and *focus* of white light of an incident backlight source. In contrast, the Farn et al invention taught the use of an optical apparatus which includes an array of refractive microlenses for focusing visible light *and* a diffracting grating for separating the visible light into primary color bands. In other words, the Claims of the present invention recite the use of a diffractive microstructure which *itself* provides the *dual functions* of wavelength division and focusing; whereas, the Farn et al invention taught a diffractive grating which provides only the *single function* of wavelength division, the function of focusing of visible light is achieved by a second, separate device (i.e., a set of refractive microlenses).

To better illustrate some of the key elements of the present invention, Claim 1, as amended, is duplicated below:

Claim 1:

1. A diffractive micro-structure color wavelength division device having a complex two-dimensional surface phase micro-structure wherein said micro-structure has a distribution and geometric characteristic dimension calculated to provide a multiwavelength modulation function and form a diffractive micro-structure color wavelength division element *enabling wavelength division and focus* of white light of an incident backlight source, *so as to cause wavelength division and focus* on different positions of space by three different spectrum regions of wavelengths of red, green, blue.

Applicant respectfully submits that this key element that the diffractive micro-structure color wavelength division device being constructed to provide the dual functionality of both wavelength division and focusing functions is also clearly stated in the Specification. For example, on page 9,

lines 6-17, it is provided that "The color wavelength division device 20 is *capable of splitting and focusing a light source*. As the color wavelength division device 20 is appropriately designed, its micro-structure is capable of phase modulation of various wavelengths of an incident light source, *thereby resulting in wavelength division and wavelength focusing* on a designated position at the time when the light reaches an observation plane (focal plane). As a result, *an arrangement of blue, green, and red spectrum region of wavelengths is attained*, as shown in FIG. 6. The *focal positions of red, green, and blue wavelengths can be expressed on a definition position* in accordance with the desire of a designer."

Applicant respectfully submits that, since the diffractive micro-structure as recited in Claim 1 of the present invention is fundamentally different from of the micro-structures taught in the Farn et al invention (i.e., the diffractive micro-structure of the present invention is constructed to provide both wavelength division and focusing functions; whereas, the Farn et al invention requires two separate elements to do these jobs, respectively), it cannot be said that Claim 1 is anticipated. Thus, clearly, Claim 1 should be allowable. Claims 2-13, which depend from Claim 1, should also be allowable. As stated previously, it has been held that a dependent claim should be considered allowable when its parent claim is allowed. In re McCann, 101 U.S.P.Q. 411 (CCPA 1954).

Furthermore, while Claims 2-13 should be allowable because of their dependency from Claim 1, Applicant would like to comment on the Examiner's rationale for "product by process" rejection. Applicant would like to remind the Examiner that MPEP Section 2113 also clearly provides that:

"The structure implied by the process steps should be considered when assessing the patentability of product-by-process claims over the prior art, especially where the product can only be defined by the process steps by which the product is made, or where the manufacturing process steps would be expected to impart distinctive structural characteristics to the final product. See, e.g., In re Garnero, 412 F.2d 276, 279, 162 USPQ 221, 223 (CCPA 1979)."

MPEP Section 2113, second paragraph.

Applicant respectfully submits that the process limitations recited in Claims 2-13, particularly Claim 13, define not only how the micro-structure of the present invention was made, but, more importantly, also *what* it does, i.e., to enable the dual functionalities of wavelength division and light focusing. In other words, Applicant respectfully submits, the process limitations are indeed an important element of the present invention to impart distinctive structural characteristics to the final product. As a result, according the mandate of MPEP Section 2113, second paragraph, they cannot be ignored.

In light of the foregoing, it is believed that the present invention is in condition for allowance. And Applicant respectfully requests that a timely Notice of Allowance be issued in this case. If the Examiner has any question, he or she is invited to call or fax Applicant's counsel at the telephone numbers below.

Respectfully Submitted,



12/15/05

Date

PTO Customer No. 022192

W. Wayne Liauh, Reg. No. 34,212
Law Office of Liauh and Associates
4224 Waiialae Ave., Suite 5-388
Honolulu, HI 96816
Telephone: (775) 363-2886
Telecopier: (775) 599-0768